U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16069937

Date: JUL. 15, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a marketing manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner offers previously submitted documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The Director did not make a determination regarding the Petitioner's eligiblity as either a member of the professions holding an advanced degree or as an individual of exceptional ability. The record reflects that the Petitioner possesses the foreign equivalent of an advanced degree. Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2) and (3)(i)(A).[4]

B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating:

> I intend to continue my career in the field of Marketing, helping companies establish their product lines or services, as well as the new products and services they want to introduce to the market.
>
> . . . .
>
> I plan to use my skills and knowledge in Marketing, gained from my 16 years of experience, to work with U.S. companies to help them in their marketing campaigns, in addition to advising U.S. companies in cross-border projects in Brazil and Latin America.
>
> . . . .
>
> I propose to use my skills and knowledge gained through my professional experience as a Marketing expert, and my broad expertise within my field, to work as a specialist and consultant in the field, developing projects for companies in Brazil who want to know more about American market trends and business opportunities for U.S. companies who are looking to move into the Brazilian and Latin American market.

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] As she meets the classification as a member of the professions holding an advanced degree, a determination regarding the Petitioner's classification as an individual of exceptional ability is moot.

In response to the Director's request for evidence, the Petitioner offered an updated statement claiming:

> I intend to continue my career in the United States as a Marketing Manager, working in a capacity such as a business development specialist in the Business field.
>
> . . . .
>
> I propose to use my skills and knowledge, gained throughout my 18 years of professional experience, to work as a Marketing and Business Development Specialist for American and international companies in the U.S. in need of an improvement in their sales practices, as well as to keep their business consistent to be able to expand and diversify.
>
> . . . .
>
> I can improve a company's business and commercial relationships through my publicity and sales strategic vision. By doing so, I will ultimately create a greater competitive advantage for all corporations and clients I serve. My bold strategies, and even bolder results, reflect how my work can impact numerous U.S. present and future businesses, solidifying their social and market presence, and thus enhancing their overall business capacities. Besides, my work will benefit the U.S. economy.

The Petitioner maintains on appeal that she "will support foreign companies, entrepreneurs, investors, and individual clients solidifying their cross-border initiatives in the United States" and her "proposed endeavor also focuses on providing advice to U.S. companies that are conducting cross-border deals, or planning to conduct cross-border activities, in Brazil." The Director determined that the Petitioner demonstrated the substantial merit of her proposed endeavor, and the record supports that conclusion. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance of her proposed endeavor.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of her providing specific marketing and business development services rather than the national importance of the position or the wide range of business fields or industries in which she intends to work. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

In her appeal brief, the Petitioner refers to herself as "a highly experienced professional" and emphasizes her "extensive knowledge," "18 years of progressive experience," "career record," and "professional experience." The Petitioner's experience, skills, and abilities in her field relate to the second prong of the

Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue here is whether the specific endeavor that she proposes to undertake has national importance under *Dhanasar*'s first prong.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. Although the Petitioner asserts that her "proposed endeavor impacts the national economy, thus serving nationally important matters," such as "[d]riving a strong relationship between FDI [foreign direct investment], and U.S. economic performance" and "[s]ecuring foreign investment in the United States generally results in increasing the number of jobs for U.S. workers," she has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of her specific proposed endeavor rises to the level of national importance. Instead, the record contains evidence regarding general information, such as economic benefits of international trade, investment, international companies, global expansion, and FDI. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does not show that the Petitioner's proposed endeavor of providing marketing and business development services stands to sufficiently extend beyond her potential or futuristic employers or clients, to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance.

Likewise, the Petitioner argues that she "is already advancing her proposed endeavor, through her work with [redacted] where she is helping with the national and international expansion of U.S. companies, and foreign companies in the U.S." The Petitioner provided a job letter indicating that she commenced employment with [redacted] in September 2018. The Petitioner filed her petition in June 2018. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Regardless, the Petitioner's ability to advance her proposed endeavor falls under the second prong of *Dhanasar*. Moreover, the Petitioner did not demonstrate how her work with [redacted] as well as with any other prospective employer claims, broadly impacts the business field more broadly beyond her employer.

Furthermore, the Petitioner has not established that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. While she references U.S. employment figures based on FDI, the Petitioner does not demonstrate how her specified proposed endeavor, either working for [redacted] or any other company, would somehow influence those figures. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's marketing and development specialist services would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not demonstrated that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.